

EXHIBIT 1

File Provided Natively

CAUSE NO. DC-17-16837

GABRIEL CASTILLO,
Plaintiff,

v.

WEBBER BARRIER SERVICES, LLC,
et. al.,
Defendants.

IN THE DISTRICT COURT

101ST JUDICIAL DISTRICT

DALLAS COUNTY, TEXAS

PLAINTIFF'S MOTION TO EXCLUDE TESTIMONY OF DR. ERIC J. BRAHIN**TO THE HONORABLE JUDGE OF SAID COURT:**

NOW COMES, Gabriel Castillo, Plaintiff in the above styled and numbered cause, and files this Motion to Exclude Testimony of Dr. Eric J. Brahin under *Daubert*. In support thereof, Plaintiff would respectfully show unto the Court the following:

I.**OPINIONS SHOULD BE EXCLUDED ALONG WITH
ANY RELATED EVIDENCE OR ARGUMENT**

To the extent that any opinion challenged herein is excluded by the Court, then any related evidence or argument must also be excluded. Such evidence is irrelevant or immaterial and must be excluded. Moreover, the probative value of any such evidence or arguments are substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the Jury, or by considerations of undue delay. *See* TRE 403. Plaintiff requests that any evidence related to these excluded opinions be made part of the court's rulings herein.

II.**ARGUMENTS AND AUTHORITIES**

For an expert's testimony to be admissible under Rule 702 of the Texas Rules of Evidence, the expert must be qualified, and the expert's opinion must be relevant to the issues in the case and based on a reliable foundation. *Exxon Pipeline Co. v. Zwahr*, 88 S.W.3d 623, 628 (Tex. 2002); *Gammill v. Jack Williams Chevrolet, Inc.*, 972 S.W.2d 713, 720 (Tex. 1998); *E.I. du Pont de Nemours & Co. v. Robinson*, 923 S.W.2d 549, 556 (Tex. 1995). Rule 702's reliability requirement focuses on the

principles, research, and methodology underlying an expert's conclusions. *Zwahr*, 88 S.W.3d at 629; *Robinson*, 923 S.W.2d at 556. Under this requirement, *expert testimony is unreliable if it is not grounded "in the methods and procedures of science"* and is no more than "subjective belief or unsupported speculation." *Id.*

II.
PLAINTIFF HAS NOT BEEN ALLOWED TO DEPOSE DR. BRAHIN

Despite numerous requests for deposition dates, Defendants have never produced Dr. Brahin for a deposition. Plaintiffs have asked for all of Defendant Webber's designated experts depositions, including Dr. Brahin many times but no dates were ever provided. For these reasons, Dr. Brahin should be stricken as his testimony amounts to trial by ambush.

III.
**ALL OF DR. BRAHIN'S OPINIONS ARE
UNRELIABLE AND WILL NOT ASSIST THE JURY**

All of Dr. Brahin's opinions are based upon an unreliable foundation and will not be helpful to the jury. Dr. Brahin's opinions are based on the notes of Dr. Edwin Johnstone and other treating doctors hired by a Worker's Compensation carrier. These doctors are not qualified, are not treating physicians and are simply hired guns by a worker's compensation insurance company. The very opinions Dr. Brahin relies upon are in and of themselves, not medical records, are inadmissible hearsay and are scientifically unreliable.

In addition, Dr. Brahin offers the opinions that he doubts Plaintiff's veracity. He is not qualified to make such an opinion, has never tested or seen Plaintiff, and is pure speculation. See his reports attached as Exhibit A to the deposition.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that this Court grant his Motion to Exclude the Expert Testimony of Dr. Eric J. Brahin together with any relief, in law and equity, to which Plaintiff may be justly entitled.

Respectfully submitted,

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By: /s/James Martin

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CERTIFICATE OF SERVICE

This will certify that a true and correct copy of the above and forgoing instrument was duly served upon the following in accordance with the Texas Rules of Civil Procedure on this the **16th** day of September, 2022.

Via Email and/or E-Service and/or E-File

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September 27, 2021

Sandra and Grant Liser
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RE: Cause No. DC-17-16837; Gabriel Castillo v. Webber Barrler Services, LLC, Webber, LLC, and Gustavo Rene Lopez; In the District Court of Dallas Texas, 101st Judicial District

Dear Mr. and Mrs. Liser:

I, Eric Brahn, am a board-certified adult neurologist with over 14 years of practice involving the diagnosis and treatment of a variety of neurological conditions, including (but not limited to) memory loss, dementia, and neuropathy. My curriculum vitae has been provided. It was requested by your office that I review medical records concerning Gabriel Castillo with particular attention given to alleged permanent neurological impairment concerning an alleged concussion resulting from a motor vehicle accident that occurred on March 10, 2017. Below is my review, summation, and commentary regarding these injuries.

REVIEW OF PROVIDED RECORDS:

Texas Peace Officers Crash Report:

- 3/10/2017: Mr. Castillo was driving in the left lane when the "crane arm" of the vehicle in front of him struck a railroad bridge, broke off, and landed in the road. Mr. Castillo's vehicle subsequently struck the fallen crane arm.

Metropolitan Methodist Emergency Center:

- 3/21/2017: Mr. Castillo reported having episodes of dizziness and headaches that developed approximately one week after his accident. He had not suffered any loss of consciousness, and there is no report of him complaining of any cognitive symptoms. Mr. Castillo had a normal neurological exam. CT scan of the head demonstrated a chronic lacunar infarction in the left corona radiata.

Concentra Medical Center:

- 3/13/2017: Mr. Castillo was driving an 18-wheeler when he drove over a cherry picker extension that was laying in the road after having been knocked off another vehicle. This impact caused Mr. Castillo's 18-wheeler to go into the air and then land without flipping the truck. The steering

wheel yanked his wrist aggressively and Mr. Castillo had resultant severe pain in his left thumb, hand, and arm. It was recommended that he undergo physical therapy three times per week for two weeks.

- 3/14/2017: Mr. Castillo described feeling lightheaded, off balance, and dizzy the day prior. He had vomiting and felt pressure on the back of his head. His cognitive and neurological exams were unremarkable. He was diagnosed with dizziness, nausea, and vomiting. CT scan of the head was ordered.
- 3/20/2017: Mr. Castillo was complaining of dizziness, photophobia, head pressure, and mood swings. He spent the last week watching TV in a dark room. Neurologic and cognitive exams were both normal. Mr. Castillo was diagnosed with post-concussive syndrome. The CT of the head was still pending.
- 3/20/2017: Mr. Castillo was having daily headaches associated dizziness when turning his head too quickly. He was having nightmares/flashbacks concerning a previous 18-wheeler accident that he had witnessed several years prior. His neurological and cognitive exams were normal, and he was referred to a neuropsychologist concerning his nightmares/posttraumatic stress disorder. There is no mention of Mr. Castillo having any cognitive impairment.
- 3/28/2017: Mr. Castillo was complaining of headaches and dizziness that occurred when he turned his head quickly to the side. He was having flashbacks concerning a previous accident. He was again referred to the neuropsychologist.
- 6/5/2017: Mr. Castillo had hand surgery on 5/25/2017. He had been seen by a neurologist one week prior and was still reporting "having a little memory loss". He continued to have headaches which were at least partially relieved with the use of Tylenol and Ibuprofen. His review of systems was positive for memory loss, and his cognitive exam was normal. He had slow finger-to-nose movements and some swaying with heel-to-toe walking.
- 6/27/2017: Mr. Castillo was still having headaches that varied in intensity. He was still attending counseling sessions. His review of systems was positive for headaches and dizziness. His neurological and cognitive exams were normal. The physician did not feel comfortable prescribing the amitriptyline that had been recommended by the neurologist. It was recommended that Mr. Castillo stop tramadol due to potential rebound headaches.
- 7/26/2017: Mr. Castillo was complaining of daily headaches in his left temporal area. He requested a new neurology referral. He was not complaining of any cognitive difficulties, but he did complain of dizziness in the review of symptoms. His neurological and cognitive exams were normal. He was referred to neurology and started on Ibuprofen.
- 8/24/17: Mr. Castillo was seen concerning daily headaches. He was additionally complaining of having nightmares at night. He did not report having any confusion or dizziness, and his mental status was normal. Mr. Castillo was referred to physical therapy and was diagnosed with post-concussive syndrome, cervicogenic headache, and posttraumatic stress disorder among others.
- 9/6/2017: Mr. Castillo was still complaining of daily headaches. He had a therapy session.
- 9/7/2017: Mr. Castillo had a physical therapy session and was diagnosed with cervicogenic headache.
- 9/28/2017: Mr. Castillo reported having constant headaches.
- 10/7/2017: Mr. Castillo continued to have headaches, but his neck was feeling better. He underwent a therapy session.

- 10/10/2017: Mr. Castillo reported having ongoing headaches and anxiety upon driving. He additionally complained of cervical discomfort, but this was improving slowly.
- 11/22/2017: Mr. Castillo was having constant headaches with at least one major headache per week. He was attending psychotherapy. Tylenol was not helping his headaches. The review of systems was positive for headaches, dizziness, memory loss, and anxiety. His mental status was normal. He was to continue with neuropsychology.
- 2/22/2018: Mr. Castillo was seen for a follow-up visit regarding cervicogenic headache and left thumb injuries. He had recently woken up with extreme dizziness that had since resolved but left lingering "fogginess". His headaches were occurring on a daily basis. Mr. Castillo's review of systems was positive for headaches but not dizziness. There was no mention of him currently having any cognitive dysfunction. His neurological and cognitive exams were normal. A psychiatric peer review found his psychiatric complaints to be largely exaggerated/falsified. The physician told Mr. Castillo that the random spell of dizziness would not be secondary to his accident that had occurred one year ago.

The Hand Center of San Antonio:

- 5/4/2017: Mr. Castillo was seen concerning an injury on his left thumb caused by his 3/10/2017 accident. He was diagnosed with ulnar collateral ligament injury of the left thumb, and surgery was recommended. On intake forms, Mr. Castillo noted that he had severe headaches and anxiety due to the accident. He did not mention having any memory or cognitive changes.
- 6/26/2017: Mr. Castillo was seen for a four-week postoperative visit.
- 7/24/2017: Mr. Castillo was seen for a postoperative visit regarding his ulnar collateral ligament repair.
- 8/28/2017: Mr. Castillo had a follow-up exam. His thumb was fully healed, and he was able to return to work and resume all activity without restriction.

Rehab Therapy Resources:

- 5/18/2017: Mr. Castillo was seen to determine the nature and extent of his psychological difficulties secondary to his accident on 3/10/2017. He was referred to a neurologist for his chronic headaches and he was going to have surgical repair of his thumb in one week. He has been involved in two previous serious accidents. Mr. Castillo was working at the time of the evaluation and was on light duty status. He was lucid and coherent, and his responses and intellectual functioning were judged to be generally intact. The psychologist diagnosed Mr. Castillo with posttraumatic stress disorder caused by his most recent accident and was also cumulative with regard to his earlier accidents. The psychologist thought that Mr. Castillo's current symptoms were at a level that will compromise his ability to safely function as a commercial driver. It was recommended that he start medication. A mental status examination confirmed difficulties with short-term memory (but no documentation was provided to support this determination).
- 9/4/2017 Letter: Mr. Castillo had 12 sessions of individual psychotherapy for his posttraumatic reactivity secondary to his accident. He progressed well, but his posttraumatic reactivity remained at a "moderately severe" range. Mr. Castillo additionally reported having chronic headaches and neck pain.

The Center for Special Surgery at CCA:

- 5/25/2017: Mr. Castillo had repair of his ulnar collateral ligament and left thumb metacarpal phalangeal joint.

GRMG Neurology Associates:

- 5/30/2017: Mr. Castillo was seen concerning daily headaches that began after his 3/10/2017 accident. These headaches were initially severe but had now become moderate. Mr. Castillo reported having suffered a brief loss of consciousness during the accident. He no longer had nausea or dizziness, but he did have some memory difficulties that had been improving. He was being treated for posttraumatic stress disorder and increased anxiety caused by the accident. His review of systems was positive for headaches, memory loss, anxiety, depression, sleep disturbance, and mood swings. Mr. Castillo was oriented to his name, location, city, state, time of day, day of week, month, year, season, and date. He could recall his birthdate and recall 2/3 objects after several minutes. He was able to spell "world" forwards and backwards without any mistakes. The rest of the neurological exam was completely normal. The neurologist diagnosed Mr. Castillo as having headaches with a differential diagnosis of postconcussive syndrome and chronic posttraumatic headache. His neurological exam was considered to be normal, and Mr. Castillo was expected to recover 100%. It was recommended that Mr. Castillo decrease his hydrocodone and tramadol use. It was also recommended that he start amitriptyline.
- 8/14/2017: Mr. Castillo was seen concerning his headaches. He has had some anxiety and anger issues, but he did not have any other post-concussive symptoms. He was having headaches on a daily basis. The review of systems stated that he had headaches, memory loss, anxiety, depression, and mood swings. Cognitive exam was unremarkable. Mr. Castillo was diagnosed with a cervicogenic headache. It was recommended that he consider physical therapy and see his primary care provider regarding starting prophylactic medication such as amitriptyline.

The Heart Institute of South Texas:

- 6/29/2017–12/19/2017: Mr. Castillo did not report having any complaints of dizziness.
- 7/12/2018–9/9/2019: Mr. Castillo did not report having any headaches, confusion, memory lapses, changes in memory, or dizziness during any of his visits.

Genex Services:

- 193 pages of documents briefly reviewed.
- 8/14/2017 Report: This note described how Mr. Castillo and the case manager met with Dr. McMahon (neurologist). The case manager noted that it was the doctor's policy to only make recommendations, and not make orders. The neurologist stated that the exam and headaches are most consistent with a neck muscle injury caused by whiplash and not a head injury. Mr. Castillo mentioned to Dr. McMahon that this was his third vehicle accident in which he has had whiplash type injury.
- 9/1/2017 Report: Mr. Castillo was not working due to headaches and posttraumatic syndrome.
- 10/27/2017 Report: Mr. Castillo was cleared by Dr. Harris to return to light duty based on his headaches and posttraumatic stress disorder.

- 11/22/2017 Provider Appointment Report: Mr. Castillo was having constant headaches. He could not remember the name of the new medical clinic he was supposed to go to. The last time the case manager made an appointment for Mr. Castillo, he canceled due to needing to drive his wife's uncle back home from Alice, Texas.
- 12/5/2017 Provider Appointment Report: Mr. Castillo was seen by a new doctor (Dr. Clark) who stated that the PTSD and headache complaints had excluded him from working. Dr. Clark recommended that Mr. Castillo see Dr. Lowry.

R. David Bauer, MD, Orthopedic Surgery:

- 9/8/2017 Designated Doctor Evaluation: Mr. Castillo had a history of a prior concussion in 2014 and a history of PTSD caused by a prior injury. Mr. Castillo claimed to be having severe headaches since the accident. He was alert and oriented and demonstrated little to no emotion when discussing the traumatic events. He was diagnosed with a tear of the left ulnar collateral ligament and posttraumatic stress disorder. Further psychotherapy was recommended.
- 2/20/2018: Mr. Castillo had another evaluation and was diagnosed with tear of the left ulnar collateral ligament of the thumb, elbow strain, and adjustment disorder with anxiety. He was considered to be at maximum medical improvement as of 1/13/2018.

Pro-Care:

- 12/5/2017: Mr. Castillo was seen concerning headaches and PTSD. His headaches began following a concussion (the accident) and were now more severe. Mr. Castillo stated that he hit his head during the accident. He had modest benefit with the use of amitriptyline. He was seeing a psychiatrist and was not complaining of having any cognitive dysfunction. His cognitive exam was normal. Mr. Castillo was given multiple diagnoses including post-concussive syndrome, PTSD, and headaches. He was referred to vestibular rehabilitation. On a patient intake form, he did not note having any problems affecting reading, concentrating, or driving.

Eswin Johnstone, MD (Psychiatry):

- 1/19/2018 Psychiatric Peer Review Report: "There was no objective evidence that Mr. Castillo experienced physical injuries more serious in a whiplash type of neck strain and sprain of the collateral ligament of the metacarpophalangeal joint of his left thumb". "Mr. Castillo did not strike his head or otherwise experience a head injury". Mr. Castillo did not seek care at the hospital immediately following the accident. "He has displayed instances of retrospective falsification in his accounts, along with a demanding attitude and accusations of substandard care". The psychiatrist opined that Mr. Castillo assembled a set of alleged symptoms and the reviewing psychiatrist thought that Mr. Castillo had reached maximum medical improvement in a piecemeal fashion as the case progressed, stating that "such belated assembly of a reputed postconcussive syndrome is characteristic of simulated, rather than genuine, cases". The reviewing psychiatrist opined that Mr. Castillo had reached maximum medical improvement and that adjustment disorder with anxiety, rather than posttraumatic stress disorder, would have been acceptable as a compensable condition. The psychiatrist did not believe that Mr. Castillo had suffered a concussion because he did not have a head injury or loss of consciousness and that the piecemeal assembly of supposed symptoms is contrary to normal concussion pathology.

Dr. Mario Juarez:

- 2/6/2018: Mr. Castillo was seen concerning a sore throat and was diagnosed with Influenza.
- 2/20/2018: Mr. Castillo was seen concerning constant dizziness and fatigue. He was diagnosed with headache, syncope and collapse, fatigue, and acute pharyngitis. A CT scan of the head was ordered. He was given steroids.
- 2/28/2018: Mr. Castillo was complaining of constant headaches and fatigue. He was on amitriptyline. He additionally was complaining of dizziness. He was diagnosed with headaches, dizziness, fatigue, and acute stress reaction. He was referred to neurology.
- 4/3/2018: Mr. Castillo was seen concerning chronic fatigue. He was on amitriptyline. He was diagnosed with posttraumatic stress disorder, diabetes, hypertension, and mixed hyperlipidemia.
- 6/13/2018: Mr. Castillo had chest congestion.
- 10/30/2018: Mr. Castillo had constipation.
- 12/17/2018: Mr. Castillo had difficulty swallowing and a sore throat. He complained of sinus pain.
- 5/1/2019: Mr. Castillo had a cough.
- 8/13/2019: Mr. Castillo had a cough.
- 11/5/2018: Mr. Christy had abdominal pain.
- 3/12/2019: Mr. Castillo had abdominal pain.
- 11/22/2019: Mr. Castillo had a cough.
- 10/14/2019: Mr. Christy was seen regarding a cough.
- 1/8/2020: Mr. Castillo complained of a cough and abdominal pain.
- 4/30/2020: Mr. Castillo had a sore throat.
- 4/28/2020: Mr. Castillo was seen concerning fatigue. He was diagnosed with hypertension, fatigue, diabetes, endocrine disorder, and testicular hypofunction.

Deposition of Gabriel Castillo, 9/13/18:

- Pages 6–9: Mr. Castillo suffered a concussion during a previous accident that occurred in 2016.
- Pages 18–21: Mr. Castillo was forced to retire from UPS on 5/1/2018 due to his injuries. He had been cleared to resume work in February 2018. Mr. Castillo stated he was unable to work because of his posttraumatic headaches and stress. He continued to have posttraumatic headaches.
- Pages 22–25: Mr. Castillo was having headaches after he returned to work following his 2014 accident. He was suffering from headaches at least once per week prior to the accident in question. He was told that his current headaches were due to whiplash.
- Pages 26–29: After his accident in 2017, Mr. Castillo's headache frequency remained the same, but the intensity increased. He was having up to 3 headache days per week, but his headache frequency after the 2017 accident was similar to that prior to the accident. He has taken hydrocodone, tramadol, naproxen, and ibuprofen for treatment of his headaches.
- Pages 30–33: Prior to the 2017 accident, Mr. Castillo had called his dispatcher to pull over to take an ibuprofen because he was suffering from a headache.
- Pages 34–37: Mr. Castillo did not receive any medical treatment on the evening of the accident (which took place on a Friday). His first visit with a medical provider occurred on the Monday

Immediately after the incident, Mr. Castillo had to be driven from Dallas to San Antonio for his appointment.

- Pages 46–49: Mr. Castillo knew his driver's license number and his Social Security number.
- Pages 50–53: Mr. Castillo was seeing a personal psychiatrist who charged \$200 per visit. He has not seen any other doctors since being released from Worker's Compensation.
- Pages 58–61: Mr. Castillo had been seeing a physician regarding his hypertension since he was in his 40s. He has been seeing Dr. Mario Juarez since he was in his 20s.
- Pages 66–69: Mr. Castillo admitted that if not for his panic attacks, he would be able to drive even when suffering from his headaches.
- Pages 74–70: Mr. Castillo stated that his head was shaking mildly twice during the accident, once when he hit the crane and again when his truck hit the ground after being airborne. His truck was unable to gain traction due to hydraulic fluid on the highway.
- Pages 82–85: Mr. Castillo had panic attacks prior to the 2017 accident. He had a panic attack approximately one week before said accident.
- Pages 90–93: Mr. Castillo stated that he was a "man of my words".
- Pages 94–97: Mr. Castillo had an impairment rating of 0% as a result of the 2017 accident.
- Pages 102–113: Mr. Castillo recounted the actual accident in a very detailed manner. Mr. Castillo was ambulatory at the scene and spoke to the driver of the other trailer.
- Pages 118–121: Mr. Castillo has developed anger issues since his accident 2017.
- Pages 122–125: Mr. Castillo thinks that his memory problems were due to the cumulative effect of his two concussions. He played football in high school. He described currently forgetting "names and stuff".
- Pages 130–133: Mr. Castillo did not describe having any cognitive issues affecting his ability to perform outside yard work or take care of his wife. He thought that he would be able to work at a different job that did not involve driving.
- Pages 142–169: Mr. Castillo had good recollection of the accident.

Michael Arambula, MD (Psychiatry):

- Note: These progress notes were handwritten and most of the content was unable to be interpreted.
- 9/16/2019: Mr. Castillo's memory was considered to be intact. He was diagnosed with posttraumatic stress disorder, "AAA" and mild traumatic brain injury.
- 8/13/2019: Mr. Castillo had an intact memory. He may have been diagnosed with headache and dizziness. He was diagnosed with posttraumatic stress disorder.
- 7/13/2019: Mr. Castillo's memory was intact. He was diagnosed with posttraumatic stress disorder, headaches, and dizziness. His Celexa was increased.
- 6/4/2019: Mr. Castillo's memory was intact. He was diagnosed with posttraumatic stress disorder, headaches, and dizziness.
- 7/5/19 (month unclear): Mr. Castillo had an intact memory. He was diagnosed with posttraumatic stress disorder, headaches, and dizziness. He was continued on Celexa.
- 6/22/2019: Mr. Castillo had an intact mental status. He was diagnosed with posttraumatic stress disorder and headaches.
- 12/11/2018: Mr. Castillo had an intact mental status. He was to continue Celexa.

- 7/22/18: Mr. Castillo's memory was considered to be intact. His Celexa was continued.
- 9/25/2018: Mr. Castillo's mental status was considered to be intact. He was diagnosed with posttraumatic stress disorder and instructed to continue with Celexa.
- 8/14/2018: Mr. Castillo's mental status was considered to be intact.
- 6/21/2018: Mr. Castillo was considered to have a normal mental status. He was diagnosed with posttraumatic stress disorder and an adjustment disorder.
- 8/1/2018: Mr. Castillo was diagnosed with posttraumatic stress disorder. Celexa was continued. His memory was intact.
- 8/4/2018: Mr. Castillo's memory was intact. These notes were very difficult to read, but Mr. Castillo had both an MRI of the brain and EEG which were normal. He was diagnosed with a head concussion and seen by neurology. He was seen by physicians concerning anxiety, headaches, and light sensitivity. In the past he had been taking Elavil and Zoloft. Mr. Castillo was complaining of dizziness. He was diagnosed with posttraumatic stress disorder and traumatic brain injury.

Lotus Spine and Pain, Neurology:

- 3/5/2019: Mr. Castillo reported that his head was jerked around significantly during the accident, but he did not suffer any loss of consciousness. He was complaining of memory loss, intermittent headaches, and dizziness upon turning too quickly. He reported having anger issues and significant photophobia and phonophobia. Mr. Castillo had suffered a prior concussion caused by a previous head injury. He was seeing a psychiatrist for posttraumatic stress disorder and was taking citalopram. He had decreased attention span and concentration but was able to immediately respond to questions and commands. His recent memory was considered to be impaired. The rest of Mr. Castillo's cognitive exam was completely normal. CT the head done in 2017 showed a chronic left deep cerebral infarction. Neuropsychological testing was requested, and Mr. Castillo was started on gabapentin.
- 4/16/2019: Mr. Castillo had recently undergone neuropsychological testing and was seeing a psychiatrist. He occasionally had pain in his temporal area. His cognitive exam was unremarkable. He was diagnosed with a post-concussive syndrome and an MRI was ordered. He was recommended to retry gabapentin at a lower dose.

Neuropsychological Institute of San Antonio:

- 4/13/2019 Neuropsychological Evaluation: Mr. Castillo was diagnosed with mild neurocognitive disorder due to traumatic brain injury with behavioral disturbances and posttraumatic stress disorder. Immediately following the accident, Mr. Castillo was able to turn on the hazard lights, get out of his cab, and implement safety measures. He did not seek hospital care following the accident. He was complaining of cognitive changes that were persistent and, in some areas, worsening. Mr. Castillo stated that he was forced to retire from working due to his accident. Mr. Castillo complained of persistent headaches and intermittent dizziness. He had difficulties with memory, trouble remembering names and affecting sleep. He had decreased short-term memory, trouble remembering names and birthdates. He reported having mild difficulties concentrating while in school. He described having uncontrolled outbursts of anger. Mr. Castillo is a high school graduate. Testing revealed impairments of executive functioning and demonstrated difficulties with verbal phonemic fluency and cognitive processing speed. Testing also showed impairments in Mr. Castillo's ability to shift cognitive sets in order to obtain desired results. He passed validity testing, and his IQ did

not change as result of the accident. Cognitive fatigue from a second mild traumatic brain injury and limited psychological endurance were among factors that aggravated Mr. Castillo's current neuropsychological functioning. His prognosis was considered to be poor. His neurocognitive impairments and comorbid diagnosis of chronic posttraumatic stress disorder has prohibited Mr. Castillo from returning to work as a commercial driver. His Beck Depression Inventory score was 26 and his Beck Anxiety Inventory score was 18.

- 6/21/2021 Supplemental Report: Mr. Castillo continued to endorse daily headaches. He was using notes and reminders to help complete daily tasks. He reported having intermittent double vision and blurry vision when viewing screens. Dr. Mercado opined that the additional records did not change her clinical and diagnostic impressions as stated in her initial report. Mr. Castillo was diagnosed with mild neurocognitive disorder due to traumatic brain injury with behavioral disturbance and posttraumatic stress disorder.

American Health Imaging:

- 4/30/2019 MRI brain: Periventricular small vessel ischemia seen involving the parietal lobes bilaterally. There is also evidence of small vessel ischemia in the pons. There is no evidence of any shear injury.

Deposition of Ryan Harris, MD, 11/7/19:

- Pages 42–45: Mr. Castillo did not mention any prior head injury resulting from an accident in 2014. Mr. Castillo did not complain of any symptoms related to his head or brain during the day of his first visit with Dr. Harris.
- Pages 50–53: Dr. Harris did not have any reason to be concerned about Mr. Castillo having had any head injury.
- Pages 54–57: Dr. Harris performed a more thorough neurological exam on the second visit based on Mr. Castillo's complaints of headaches and dizziness. His neurological examination was unremarkable.
- Pages 62–65: Mr. Castillo did not report ever feeling dazed, confused, or disoriented at the time of the accident, nor did he complain of any memory loss immediately before or after the accident. He did not complain to Dr. Harris of any neurological issues at the scene of the accident.
- Pages 66–69: Dr. Harris did not see any objective evidence of neurological impairment from 3/13/17–3/20/2017. Dr. Harris did not see any evidence that Mr. Castillo had experienced any head injury.
- Pages 74–77: Dr. Harris never gave Mr. Castillo a diagnosis of traumatic brain injury.
- Pages 102–105: Dr. Harris did not think that Mr. Castillo's complaints of dizziness and fogging in February 2018 were related to his accident.
- Pages 106–109: Mr. Castillo appeared to have a normal cognitive exam in February 2018. The doctor thought that his mildly abnormal exam on 6/5/2017 had nothing to do with the motor vehicle accident.
- Pages 110–113: Dr. Harris did not think that Mr. Castillo had a head injury as a result of his accident in 2017.

Valiant Mental Health, Ann Marie Hernandez, Ph.D.:

- 8/31/2020 Psychological Evaluation: Mr. Castillo suffered a concussion following an accident in 2014 and he returned to work in 2015. He was involved in another accident in 2017 which caused him to have chronic headaches. Mr. Castillo is able to complete daily tasks including basic hygiene, financial management, cooking or self-feeding, and dressing. He did not demonstrate any memory impairment related short and long-term memory. His concentration was unimpaired. His IQ was 98 and no nonverbal cognitive impairments were identified. His personality assessment inventory demonstrated "a degree of somatic concerns that is unusual even in clinical samples". The somatic complaints are likely to be chronic and render Mr. Castillo incapable of forming even minimal role expectations. This pattern was consistent with conversion and somatization disorders. Mr. Castillo described his thought processes as marked by confusion, distractibility, difficulty concentrating. He described having difficulties communicating with people because of tangential or circumstantial speech. The psychologist felt that Mr. Castillo had a diagnosis of mild depressive episode, but he did not exhibit a threshold for posttraumatic stress disorder. He met criteria for posttraumatic stress disorder after the 2017 accident, but his symptoms were most likely due to accumulative effect of multiple traumatic events, including previous accidents and personal losses.

Robert Lowry, MD:

- 4/12/2021: Mr. Castillo was complaining of headaches since his accident. He thought that his short-term memory was poor, and his cognitive processing was slowed. On exam, Mr. Castillo had difficulty searching for a few words and was "a bit of a chatterbox and would head down into rabbit holes". Accommodation was six inches and extraocular motor examination elicited dizziness. Mr. Castillo was able to name months backwards and reverse a string of three and four digits. He had some delay in subtracting \$6.35 from \$10. Mr. Castillo was diagnosed with TBI, postconcussive syndrome, headaches, posttraumatic stress disorder, and cervical sprain/strain. Dr. Lowry attributed Mr. Castillo's headaches partly to his "visual system injury" and stated that Mr. Castillo had clear pursuit nystagmus that was not apparent when evaluated by his neurologist in 2019. Dr. Lowry was unable to determine what specific memory deficits Mr. Castillo had. Dr. Lowry recommended that Mr. Castillo see a personal counselor to undergo neuropsychological testing, see an optometrist, and obtain x-rays of the cervical spine.
- 6/17/2021: Mr. Castillo continued to complain of headaches and poor memory. He had a couple of word searching events during the interview. No vision abnormalities were noted. It was recommended that Mr. Castillo see a personal counselor for neuropsychological testing, see an optometrist, and receive trigger point injections.

RECORDS PRIOR TO MARCH 24, 2017, ACCIDENT:

Seguin Fire and EMS:

- 7/23/2014: Mr. Castillo was in a vehicle that was rear-ended. His GCS was 15 and he had not suffered any loss of consciousness.

Guadalupe Regional Medical Center:

- 7/23/2014: Mr. Castillo was riding in his 18-wheeler when the vehicle was struck from behind. He was complaining of neck pain and was diagnosed with a strain.

- CT Cervical Spine: Ossification of the posterior longitudinal ligament at the C3 and C4 vertebral bodies causing mild to moderate spinal canal stenosis at those levels particularly on the left.

Nova Medical Center:

- 7/24/2014: Mr. Castillo was involved in a motor vehicle accident while driving his work truck. He reported having increased dizziness and difficulty with memory. The accident did not cause him to suffer any loss of consciousness. He reported having headaches and pain in his neck, mld back, low back, anterior chest, and hips.
- 7/28/2014: Mr. Castillo was complaining of pain in his neck, shoulder, low back, and head. He additionally reported having dizziness and tingling in both his hands. His head felt cloudy.
- 8/1/2014, 8/18/2014: Mr. Castillo continued to complain of dizziness, headaches, and the feeling that his head was cloudy.
- 9/18/2014: Mr. Castillo continued to have occasional headaches. He had not suffered any loss of consciousness.
- 10/1/2014: Mr. Castillo's headaches were decreasing.
- 10/16/2014: Mr. Castillo continued have headaches and the feeling of "dullness" in his head.
- 11/3/2014: Mr. Castillo was waiting for a neurological consultation.
- 11/5/2014: Mr. Castillo's headaches had resolved.

Baptist M & S Imaging:

- 7/25/2014 CT Head: No evidence of any intracranial process. (The CT scan was performed for history of headache/sprain of lumbar/neck/thoracic/ribs.)
- 11/15/2011 X-Ray Skull: No acute fracture evident. (The x-ray was performed for history of occipital pain status post trauma.)

Lone Star Physical Medicine Rehabilitation:

- 10/13/2014: Mr. Castillo was seen following a motor vehicle accident that occurred on 7/23/2014. He had not suffered loss of consciousness and was complaining of pain in his spine and shoulders. CT scan of the brain was unremarkable.
- 2/4/2015: Mr. Castillo was seen concerning cervical and thoracic disc protrusions.

Blessing Anyatonwu, DC:

- 12/17/2014 Worker's Compensation Evaluation: Mr. Castillo was complaining of pain in his shoulders and right arm, bilateral upper extremity numbness, and weakness in his shoulders and arms. He was diagnosed with subscapularis muscle sprain, sprains and strains at unspecified site of shoulder and upper arm, and partial tear rotator cuff. He was not considered to be at maximum medical improvement.
- 5/27/2015: Mr. Castillo had reached his maximal medical improvement on 5/27/2015 with respect to his shoulder injuries.

Lawrence L. Lenderman, MD (Orthopedic Surgery):

- 4/29/2015: Mr. Castillo was seen regarding a shoulder injury that was caused by the 7/23/2014 accident.

- 7/31/2017: Mr. Castillo was seen concerning his shoulders.

Premier Medical Imaging:

- 5/12/2016 MRI Cervical Spine: Reversal of normal cervical lordosis, Spondylosis without any neuroforaminal or spinal canal stenosis.
- 8/6/2014 MRI Thoracic Spine: Left paracentral disc herniation at T8-9 with left-sided cord compression. Broad-based disc herniation at C5-6 with 1 mm cord compression.
- 8/6/2014 MRI Cervical Spine: Broad-based disc bulges at C3-4 and C4-5 and C6-7. Broad-based disc herniation at C5-6 of 3.5 mm with impression upon the thecal sac.

OPINION:

Mr. Castillo was a 66-year-old male when he was involved in a motor vehicle accident on 3/10/2017. Based on the documentation provided, it is highly likely that Mr. Castillo experienced a mild concussion caused by his accident with a resultant post-concussive syndrome consisting of dizziness. His complaints of headaches were diagnosed by a neurologist as cervicogenic and unrelated to any traumatic brain injury. The onset of his cognitive complaints was not consistent with a postconcussive syndrome or traumatic brain injury and are unrelated to his accident. It is also important to mention that Mr. Castillo contradicted himself multiple times which forces me to doubt the veracity of his post-accident complaints.

Mr. Castillo was traveling at full highway speed when he ran over a piece of a crane that had fallen on the highway. Mr. Castillo's vehicle was launched into the air and then hit the ground. Based on my experience and training as a neurologist, the shaking of the head/brain during this type of event is enough to cause a traumatic brain injury. Mr. Castillo reported to his physicians soon after the accident that he had not suffered loss of consciousness, and he did not mention having any neurological symptoms at the scene of the accident. He was ambulatory at the scene, and he demonstrated good recall of events during his deposition. EMS also was not called to the scene, nor did Mr. Castillo seek emergent care for any neurological symptoms immediately following the accident. These facts demonstrate that Mr. Castillo thankfully sustained a concussion/traumatic brain injury that was mild in severity.

A postconcussive syndrome is a constellation of symptoms that a person may develop immediately to just a few days after the offending accident. Typical symptoms include memory loss, headaches, and dizziness. Posttraumatic encephalopathy, or memory loss/cognitive symptoms due to a traumatic brain injury, is immediate and either remains static or improves over time. Cognitive symptoms that begin days, weeks, or months after an accident are not consistent with posttraumatic encephalopathy. Mr. Castillo first mentioned memory symptoms when during a visit with neurologist (Dr. McMahon) on 5/30/2017. He did not mention to Dr. Harris, his Workmen's Compensation physician, that he had any cognitive symptoms during visits dated 3/14/2017, 3/20/2017, or 3/28/2017. This indicates that Mr. Castillo's cognitive symptoms began sometime between 3/28/2017 and 5/30/2017. As mentioned above, a delayed onset of cognitive symptoms weeks after an accident is not at all consistent with posttraumatic encephalopathy. It is important to note that Mr. Castillo had two visits with Dr. McMahon in 2017, and no cognitive impairment was found during either consultation. Mr. Castillo had possible abnormal cognitive exams in 2019 noted by a second neurologist and neuropsychologist, which all differ from his normal cognitive exams performed by his first neurologist in 2017. During his neuropsychological evaluation, Mr. Castillo additionally mentioned that his cognitive symptoms were worsening. Evolving or worsening cognitive symptoms/impairment are also not consistent with a postconcussive syndrome or posttraumatic

encephalopathy, and these abnormal exam findings cannot be attributed to the accident in 2017. It is also important to note that Mr. Castillo did not state during his deposition that he had any cognitive impairment that would prevent him from driving a truck or working.

Mr. Castillo suffered a concussion in 2014. Unlike the 2017 accident, in 2014 Mr. Castillo reported having cognitive symptoms the day immediately following injury. He additionally developed headaches that never resolved. Mr. Castillo stated during deposition that his headache frequency did not worsen as a result of his accident in 2017, and his headache frequency of one to three headaches per week was the same as it was prior to his 2017 accident. It was not uncommon for Mr. Castillo to take ibuprofen as treatment of these headaches, and he even had to pull over a few times while driving for work in order to take medication for his headaches prior to 2017. Dr. McMahon diagnosed Mr. Castillo with cervicogenic headaches, or headaches caused by neck issues, such as whiplash. Cervicogenic headaches are not postconcussive headaches and are not attributed to any concussive event or traumatic brain injury.

The only symptom that can reasonably be attributed to Mr. Castillo's mild concussion is his dizziness, which began just a few days after his accident. This dizziness seemed to be intermittent in frequency, as this was not a complaint made during all of his physician visits. Despite his repeated episodes of dizziness, Mr. Castillo was never referred to ENT or vestibular therapy, a move that would be standard of care for a patient complaining of disabling dizziness. Mr. Castillo also admitted during deposition that his dizziness was not a limiting factor in his ability to drive a truck. Therefore, there is no evidence in the records that dizziness, especially after his first week after the accident, was at all disabling or limiting Mr. Castillo's ability to perform any activity.

It must be noted that Mr. Castillo contradicted himself throughout the medical records. He stated to many of his physicians that he was having daily headaches, but when asked under oath during deposition, he admitted that his headache frequency was equal to the rate of regularity that existed prior to the accident. Mr. Castillo was not forthcoming with his past medical history of concussion when speaking to Dr. Harris, a very important fact that any reasonable individual would mention to their treating physician. Mr. Castillo told Dr. Harris and an emergency room physician that he had not suffered any loss of consciousness, but he later stated to Dr. McMahon that he did lose consciousness during the accident. Mr. Castillo additionally mentioned during a mental health evaluation on 8/31/2020 that his 2017 accident caused his chronic headaches, when in fact his chronic headaches began following his first concussion in 2014.

There are many other facts that must be considered in this case. Mr. Castillo was seen by Dr. Hernandez, a psychologist, who thought that Mr. Castillo had patterns consistent with conversion and somatization disorder, which would be consistent with the contradictions that he made throughout the case. I find it very puzzling that Mr. Castillo did not mention having any cognitive impairment and only mentioned having headaches and dizziness once during visits with his longtime personal physician of over 40 years, Dr. Juarez. Dr. Mercado, the neuropsychologist, mentioned that Mr. Castillo's cognitive prognosis was poor. However, Mr. Castillo mentioned that he did not have any cognitive difficulties affecting his ability to drive his car or truck, perform outside yard work, or take care of his wife – all activities that someone with a poor cognitive prognosis would have difficulties performing.

In conclusion, Mr. Castillo was a 65-year-old male when he was involved in a motor vehicle accident on 3/10/2017 that caused a minor concussion with resultant dizziness. His cognitive symptoms are not consistent with posttraumatic encephalopathy. Mr. Castillo had a pre-existing history of headaches, and

their frequency did not worsen as result of this accident. Documentation indicates that these headaches were deemed by Mr. Castillo's physician to be cervicogenic in nature and not related to any brain injury. Finally, there were multiple contradictions made by Mr. Castillo which forces me to doubt the overall veracity of his post-accident complaints.

My opinions are based on my education, training, and background as a board-certified neurologist. They are also based on a complete review of all medical records supplied to me regarding this matter. A reasonable degree of medical probability was utilized to arrive at these opinions.

I reserve the right to amend these opinions should additional information be made available to me.

Sincerely,



Eric J. Brahn, MD

Eric J. Brahin, MD

Board Certified in Neurology
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August 9, 2022

Sandra and Grant Liser
NAMAN HOWELL SMITH & LEE, PLLC
Fort Worth Club Building
306 West 7th Street, Suite 405
Fort Worth, Texas 76102-4911

RE: Cause No. DC-17-16837; Gabriel Castillo v. Webber Barrier Services, LLC, Webber, LLC, and Gustavo Rene Lopez; in the District Court of Dallas Texas, 101st Judicial District

Dear Mr. and Mrs. Liser:

I have received additional documents to review concerning the above referenced case. A synopsis of these records is below.

Touchstone Imaging:

- 5/20/2022 MRI left shoulder: Reviewed
- 5/20/2022 MRI right shoulder: Reviewed
- 5/20/2022 MRI cervical spine: Reversal of the lordotic curvature of the spine. Mild to moderate spinal cord compression and posterior element hypertrophy noted at C3-4. 2 to 3 mm bulge at C4-5 with slight spinal cord indentation. Neuroforaminal stenosis complicated by moderate to marked posterior element hypertrophy at C4-5. 2 to 3 mm disc herniation with neuroforaminal stenosis at C5-6.

North Central Psychiatric Associates:

- 8/14/2018 - 4/25/2022: Mr. Castillo had 15 visits with the psychiatrist between these dates. The notes are handwritten and very difficult to interpret. He was given diagnoses of posttraumatic stress disorder, traumatic brain injury, chronic pain, and adjustment disorder.

Steltzer Chiropractic Center:

- 11/2/2021 - 3/23/2022: Mr. Castillo had multiple visits between these dates for chiropractic care. During the initial evaluation, he reported having occasional dizziness, occasional double vision, memory loss, and headaches. He was given multiple diagnoses including posttraumatic headaches and multiple orthopedic conditions.

MD Spine Care and Orthopedics:

- 5/26/2022: Mr. Castillo was seen for shoulder pain.

These records do not change my original opinion contained in my report dated September 27, 2021.

My opinions are based on my education, training, and background as a board-certified neurologist. They are also based on a complete review of all medical records supplied to me regarding this matter. A reasonable degree of medical probability was utilized to arrive at these opinions.

I reserve the right to amend these opinions should additional information be made available to me.

Sincerely,



Eric J. Brahin, MD

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JAMES MARTIN on behalf of James Martin

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Status as of 9/20/2022 8:20 AM CST

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